

FISH AND WILDLIFE COMMISSION AGENDA ITEM COVER SHEET

Meeting Date: February 15, 2018

Agenda Item: Little Belt Creek Instream Flow Water Right Lease (R4)

Division: Fisheries

Action Needed: Final

Time Needed on Agenda for this Presentation: 5 Min

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Background. Little Belt Creek flowing from the Highwood Mountains near Belt supports a rainbow trout fishery. In the past during summer low-flow periods the diversion for water for irrigation resulted in dewatering of Little Belt Creek, including the reach through publicly accessible state land. Restoring and protecting streamflow through this historically dewatered reach would benefit the fishery as well as increase angling opportunities on a readily accessible stream reach.

On October 12, 2017 the Commission directed FWP staff to negotiate a water-right leases for two water rights from the Belt Creek, subject to final Commission approval. An agreement has been reached with the owner of the most senior irrigation water rights on Little Belt Creek, Dan and Diane Wilkins. They have agreed to limit their maximum diversion to 1 cfs and to further curtail their diversion of water when flow in Little Belt Creek drops below 2.1 cfs. The 2.1 cfs flow is based on an analysis of the water level needed to keep riffles generally covered in water. The term of the water lease is 10 years and it may be renewed after that period if allowed by law. The annual cost is \$500.

Public Involvement Process & Results. To change the lessors water rights to instream flow, FWP must make application to DNRC. Notice would be given to the public, and potentially affected parties would have the opportunity to object to the change to instream flow. DNRC will also conduct an environmental review.

Alternatives and Analysis. The No Action alternative would be for FWP to not lease the water rights and not change them to instream flow, whereby this opportunity for improvement to instream flow in Little Belt Creek would be forgone. Another alternative would be for the water user to temporarily change the water right to instream flow without the involvement of FWP. This alternative would require the lessors to incur the legal and technical cost of pursuing the change to instream flow, for which they have limited incentive. It is unlikely the water user would pursue changes to instream flow for the benefit of the public fishery without FWP involvement.

Agency Recommendation & Rationale. FWP recommends that the Commission approve the water-right lease agreement and direct FWP staff to file an application with DNRC to temporarily change the rights to instream flow.

Proposed Motion.

I move the Fish and Wildlife Commission approve the water-right lease with Daniel G. and Diane M. Wilkins and direct FWP staff to submit to DNRC an application to temporarily change the water rights to instream flows, as described in the lease agreement.